IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 3803 OF 1999

Mr.Andreas Wernle. ...Applicant
V/s.
The State of Maharashtra & Anr. ...Respondents

Mr.C.R. Naidu for Applicant.
Ms.S.D. Shinde, APP for the State.

CORAM : V.M. KANADE, J.

DATED : JANUARY 23, 2006

P.C. :-

. Heard learned Counsel for the applicant. None appears on behalf of the respondent though served.

. The applicant is challenging the order of issuance of process by the Metropolitan Magistrate on a complaint which is filed by the respondent-complainant. It is alleged in the complaint that the applicant company which is a company registered under the Companies Act in Switzerland had represented to the complainant that they were interested in having a joint alliance with them and therefore, they persuaded them to reveal certain information. It is alleged in the complaint that on the basis of the representation made

by the applicant that they wanted to have an alliance and have 50-60% share in the joint alliance, certain information was revealed to the applicant herein. It is further alleged that since this information which was revealed was not by itself sufficient or were inadequate, the applicant herein persuaded the employees of the complainant to join their company. It is, therefore, alleged in the complaint on the basis of the averments that the applicant had committed an offence punishable under Sections 406, 420 etc. and thus, was liable to be convicted for the commission of offence of criminal breach of trust and cheating.

2. Learned Counsel appearing for the applicant submitted that even if the averments which are mentioned in the complaint had taken at its face value, no offence as alleged by the complaintant is made out and therefore, the said process which was issued against the present applicant was liable to be quashed. He further submitted that apart from that, the averments in the complaint were patently false. He invited my attention to the correspondence between the applicant and

respondent company wherein the respondent company in fact approached the applicant company and had sought certain information.

3. I have perused the complaint which is filed by the respondent. Perusal of the complaint clearly discloses that even if the said averments are taken at its face value, no offence as alleged by the complainant is made out. The question of criminal breach of trust or cheating does not arise as admittedly there was no entrustment of any amount or valuable security by the respondent-complainant in favour of the applicant company. In the result, therefore, there is absolutely no application of mind on the part of the Magistrate in issuing process.

4. The process and the complaint which is issued, therefore, is liable to be quashed and is hereby quashed. The application is made absolute in the above terms.

(V.M. KANADE, J.)

q